

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Abraham Flaxman and
Amy Hagopian, individually and for a
proposed class,
Plaintiffs,
v.

Bob Ferguson, in his official capacity as the Attorney General of the State of Washington, and Kate Reynolds, in her official capacity as Executive Director of the Executive Ethics Board of the State of Washington, Defendants.

Case No. 2:23-cv-01581-KKE

COMBINED JOINT STATUS
REPORT AND DISCOVERY
PLAN

Counsel for the parties spoke by telephone on November 20, 2023. Defendants object to entry of a discovery plan and have filed a contested motion to stay discovery (ECF No. 13) and a motion to dismiss the amended complaint. (ECF No. 19.)

1. Nature and Complexity of the Case

This is an action for declaratory and injunctive relief for a putative class challenging policies adopted by the “Executive Ethics Board” of the State of Washington that

COMBINED JOINT STATUS REPORT AND DISCOVERY PLAN-1

Jay Gairson, WA Bar # 43365
Gairson Law, LLC
4606 Martin Luther King Jr Wy S
Seattle, Washington 98108
(206) 357-4218
jay@gairson.com

1 restrict the contents of statements that may be shared on the “Faculty Issues and
 2 Concerns” mailing list hosted by the University of Washington. The facts are straightforward
 3 and uncomplicated.

5 **2. Defendants’ Statement**

6 Defendants submit the following: Without waiving any defenses, including juris-
 7 diction, Defendants take the position that discovery should not proceed and that no dis-
 8 covery deadlines or orders should be issued at this time, as the case is not justiciable and
 9 the Court either lacks jurisdiction or must abstain from exercising jurisdiction under
 10 *Younger v. Harris*, 401 U.S. 37, 50-54 (1971). *See Steel Co. v. Citizens for a Better Env’t*,
 11 523 U.S. 83, 94, 118 S. Ct. 1003 (1998) (“Without jurisdiction the court cannot proceed at
 12 all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the
 13 only function remaining to the court is that of announcing the fact and dismissing the
 14 cause.”) (quoting *Ex parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1868)). Defendants
 15 have set forth their position in their pending Motion to Extend Deadlines (Dkt. No. 13)
 16 and pending Motion to Dismiss the Amended Complaint (Dkt. No. 19). If, however, the
 17 Court decides that it both has jurisdiction over this case and may appropriately exercise
 18 jurisdiction, Defendants will meet and confer with Plaintiffs regarding an appropriate
 19 case schedule.

20 **3. Proposed Deadline for Joining Additional Parties**

21 Plaintiffs do not intend to add additional parties.

22 **4. Consent to Magistrate**

23 The parties do not unanimously consent to trial before the Magistrate Judge.

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Jay Gairson, WA Bar # 43365
 Gairson Law, LLC
 4606 Martin Luther King Jr Wy S
 Seattle, Washington 98108
 (206) 357-4218
 A. jay@gairson.com

5. Proposed Deadline for Filing Motion for Class Certification

Plaintiff propose to file their motion for class certification by February 26, 2024.

6. Discovery Plan

Defendants have to date declined to engage in setting a discovery plan. Plaintiffs propose the following:

- A. Initial Disclosures: December 31, 2023
- B. Subject, timing, and potential phasing of discovery: Plaintiffs believe that discovery should not be phased and that all discovery, including expert discovery, can be completed by May 27, 2024.
- C. Privilege Issues: Plaintiffs are unaware of any privilege issues.
- D. Proposed Limitations on Discovery: None apparent at the present time.
- E. The Need for any Discovery Related Orders: None apparent at the present time.

7. Local Rule 26(f)(1)

- A. Prompt case resolution: The prospects for promptly settling or otherwise resolving the case are dim.
- B. The parties do not plan to engage in alternate dispute resolution.
- C. Plaintiffs' counsel is not aware of any related cases.
- D. Management of discovery: Plaintiffs' counsel believes that this case requires close discovery supervision by the Magistrate Judge.

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Jay Gairson, WA Bar # 43365
Gairson Law, LLC
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Seattle, Washington 98108
(206) 357-4218

A. jay@gairson.com

E. Targeted discovery: Plaintiff will limit their discovery to any affirmative defenses that defendants may advance and to the application of the policies that plaintiffs challenge.

F. Phasing motions: None at the present time

G. Preservation Issues: None at the present time.

H. Inadvertent Production of Privilege Information: Plaintiffs will discuss this with defense counsel when counsel chooses to engage in discovery.

I. The case is not likely to involve ESI.

J. A Model ESI agreement does not appear required.

K. Plaintiffs plan to move for class certification by February 26, 2004

8. Discovery can be completed by May 27, 2024.

9. Bifurcation is not appropriate in a case seeking declaratory and injunctive relief.

10. The pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of economy.

11. The parties do not intend to use any ADR option.

12. The case will be ready for trial after the Court's ruling on dispositive motions.

13. If the case will be tried, it will be a non-jury case that should require no more than three trial days.

14. Trial counsel for plaintiffs: Kenneth N. Flaxman, 200 S Michigan Ave, Ste 201, Chicago, Illinois 60604. (312) 427-32000

15. Trial counsel for defendants: Nathan K. Bays, Assistant Attorneys General, 800 Fifth Avenue, Ste 2000, Seattle Washington 98104.

16. Plaintiff does not wish a conference with the Court.

17. There are no nongovernment corporate parties.

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Jay Gairson, WA Bar # 43365
Gairson Law, LLC
4606 Martin Luther King Jr Wy S
Seattle, Washington 98108
(206) 357-4218

A. jay@gairson.com

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18. All counsel have reviewed the Civil Rules, the Local Rules, and the Electronic Filing Procedures and has reviewed and sought to comply with Judge Evanson's Standing Order.

/s/ Jay Gairson, WA Bar # 43365
Gairson Law, LLC
4606 Martin Luther King Jr Wy S
Seattle, Washington 98108
(206) 357-4218
jay@gairson.com

/s/ Kenneth N. Flaxman
knf@kenlaw.com
Joel A. Flaxman
jaf@kenlaw.com
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
(admitted pro hac vice)
attorneys for plaintiff/

ROBERT W. FERGUSON
Attorney General

/s/ Nathan K. Bays
NATHAN K. BAYS, WSBA #43025
ANDREW R.W. HUGHES, WSBA
#49515
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 521-3683
(206) 332-7096
Nathan.Bays@atg.wa.gov
Andrew.Hughes@atg.wa.gov
*Attorneys for Defendants Bob Ferguson and
Kate Reynolds*

COMBINED JOINT STATUS REPORT
AND DISCOVERY PLAN-5

Jay Gairson, WA Bar # 43365
Gairson Law, LLC
4606 Martin Luther King Jr Wy S
Seattle, Washington 98108
(206) 357-4218

A. jay@gairson.com